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December 19, 2019

Via ECF

Judge Sanket J. Bulsara
United States District Court - EDNY
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Assets Recovery 23, LLC v. Gasper, et al., 19-cv-02628-ENV-SJB

Dear Judge Bulsara:

We are the attorneys for Assets Recovery 23, LLC, the Plaintiff in the above-referenced foreclosure action. Let this letter serve as a response to the Order to Show Cause issued by the Court on December 19, 2019.

Please be advised that Plaintiff's failure to appear was a calendaring error based on the incorrect assumption that the Initial Conference would be stayed due to Plaintiff's outstanding Motion for service publication [ECF Doc. # 20].

We commenced this action by filing a Complaint on May 3, 2019. The Clerk issued Summons documents on May 8, 2019. However, after several months of multiple in-state and out-of-state service attempts, Plaintiff was unable to, with due diligence, serve the Summons and Complaint by personal service or another prescribed method on Defendant Marlena Gasper.

Notably, Marlena Gasper is an indispensable and necessary party defendant to this foreclosure action as she is a borrower under the relevant note and mortgagor. Accordingly, on October 11, 2019 Plaintiff filed an application for an order pursuant to FRCP Rule 4(e)(1) and CPLR §308(5), 314, 315 and 316, ordering service of the Summons on Defendant by publication or in such other manner as the Court directs [ECF Doc. # 20].

Since that Motion had not been decided, and service upon Marlena Gasper had not yet been achieved, we anticipated that the Initial Conference scheduled for December 18, 2019 would be stayed until all necessary party Defendants were properly served. In hindsight, we should have requested a stay pending a decision on the Motion for publication prior to the conference.

We respectfully ask that the Court excuse our failure to appear as we did not intend to flout the Court's directive. Further, our absence is not part of a series of flippant behavior. Should the Court be inclined to reschedule the appearance, notwithstanding the service issues, Plaintiff's counsel will certainly appear.

We apologize for any inconvenience this may have caused. Thank you for your review of our submission.

Respectfully submitted,

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Attorneys for Plaintiff

/s/ Alan H. Weinreb
Alan H. Weinreb, Esq.